

### 3. Claim rejections under 35 U.S.C. §112, second paragraph

Claims 1-17 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the Examiner points to the use of "composition" in claims 1 and 7 as rendering the claims unclear.

Applicants present the above amendment of claims 1 and 7 to more particularly point out and distinctly claim the subject matter of the invention. Therefore, Applicants believe this rejection should be withdrawn.

### 4. Claim rejections under 35 U.S.C. §103

First, claims 1-12 and 16-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ching, U.S. Pat. No. 5,744,246 ("Ching") in view of Nordstrom, U.S. Pat. No. 3,536,687 ("Nordstrom"). Specifically, the Examiner alleges Ching teaches a container as recited by claim 1, and Nordstrom supplements Ching by teaching an oxygen scavenging polymer comprising a polymer backbone and cyclic olefinic pendant groups. Applicants respectfully traverse this rejection.

Ching teaches an oxygen scavenging ribbon which can be used as a component of an packaging article. See, e.g., Ching, Figs. 3 and 4. The ribbon is incorporated into the structure of the packaging article but is not sufficient to form the packaging article. By contrast, the present invention is directed to a multi-layer rigid container, i.e., one in which the multi-layer oxygen scavenging container does form the packaging article. Ching neither teaches nor suggests a multi-layer rigid container as presently claimed. Further, Ching does not teach a multi-layer structure having an oxygen scavenging layer between two barrier layers. Despite the

Examiner's statement to the contrary, inspection of Ching, Fig. 1, shows a structure comprising only a single barrier layer (Fig. 1, "polymeric barrier (B)").

Regarding Nordstrom, this reference only teaches cyclohexenyl polymers for use in coating applications (col. 1., lines 28-31), and does not discuss packaging articles or suggest using cyclohexenyl polymers in the core layer of a multi-layer packaging structure. Therefore, the combination of Ching and Nordstrom neither teaches nor suggests the present invention, and this rejection should be withdrawn.

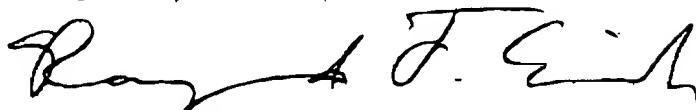
Second, claims 13-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ching and Nordstrom, as applied above, and further in view of Katsumoto et al., U.S. Pat. No. 6,139,770 ("Katsumoto"). Specifically, the Examiner alleges Katsumoto supplements Ching and Nordstrom by teaching triggering materials, such as photoinitiators. Applicants respectfully traverse this rejection.

Ching and Nordstrom do not teach a multi-layer packaging article, as described above. The teaching of trigger materials, such as photoinitiators, by Katsumoto does not overcome this deficiency of Ching and Nordstrom. Therefore, Applicants believe claims 13-15 are patentable over Ching, Nordstrom, and Katsumoto, and this rejection should be withdrawn.

5. Conclusion

In summary, Applicants believe all pending claims 1-17 are in condition for allowance. The Examiner is invited to contact the undersigned patent agent at (713) 934-4065 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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## Appendix A

### Amended Claims

1. (Amended) A multi-layer rigid container for food or beverage packaging comprising at least an inner layer, an outer layer and a core layer between the inner layer and the outer layer, wherein the inner and outer layers are comprised of an aromatic [polyesters] polyester or [copolyesters] copolyester, and wherein the core layer is comprised of (i) an oxygen scavenging [composition] polymer comprising [(a)] a polymer backbone; (b)] and cyclic olefinic pendent groups covalently linked to the polymer backbone; and [(c)] (ii) a transition metal catalyst.

7. (Amended) The rigid container of claim 1, wherein the oxygen scavenging [composition] polymer is selected from the group consisting of a ethylene/methyl acrylate/cyclohexenyl methyl acrylate terpolymer, a cyclohexenyl methyl acrylate/ethylene copolymer, a cyclohexenyl methyl methacrylate/styrene copolymer, a cyclohexenyl methyl acrylate homopolymer and a methyl acrylate/cyclohexenyl methyl acrylate copolymer.